

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-Third Legislature
State of Maine

Daily Edition

First Special Session
April 1, 2008 to April 18, 2008

Pages 1760 - 2135

**STATE OF MAINE
ONE HUNDRED AND TWENTY-THIRD LEGISLATURE
FIRST SPECIAL SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Tuesday
April 1, 2008

In compliance with a proclamation of Governor **JOHN E. BALDACCI**, the Senators convened in the Senate Chamber at ten o'clock, in the morning and were called to order by President **BETH G. EDMONDS** of Cumberland County.

Prayer by Reverend Timothy Wilcox of Fairfield and Fairfield Center United Methodist Churches.

REVEREND WILCOX: I invite you to be in a spirit of prayer. Oh Wondrous Spirit who has made all things, we thank You for this world that You have made, for all of Your citizens, and those who work hard in so many ways; on the farm, in the factory, in businesses and schools, in homes and many other places too. We thank You for the ways that You have created us and for the gifts that You have given each of us. We acknowledge that we have not always listened to Your calling to us. We have not always taken responsibility for our roles in the world and our relationships with each other. We have not always heard the cry for justice and the cry of Your creatures. We pray this morning that You would guide those of us who would serve. Guide us in doing what is best for the citizens of this state and for all of the creation that You have made. In this time of difficult choices, of budgets, of final legislation, and of trade-offs that are not easy help us find wisdom. Help us have the courage to stand up for those who perhaps have no voice. Help us to make the hard choices with the long term in mind, even if it is difficult to see any short term gain. Let us rise above the many differences we have to find what we have in common, which, among other things, includes the common interests and the common good of the state, and not forgetting to rise above those things that would tear us apart. Let us remember, as one wise person said, that in essentials we can find unity, in nonessentials liberty, but in all things charity. We have been waiting so much for spring. As surely as the signs of spring are now appearing about us with green shoots, disappearing snow banks, and in some parts of the state even greening grass, we see these signs of renewal, so renew us. Renew our spirit for these last days of the session. Renew our passion that has brought us to places of service. Excite us for the load ahead and help us to hear Your call, not forgetting those who are hungry today, those who are thirsty today, those who need care today, those who are seeking opportunity for the ability to use the gifts that you have given each of us. May we seize that opportunity with joy today and always, doing so in Your name. Amen.

S.C. 727

**STATE OF MAINE
PROCLAMATION**

WHEREAS, there exists in the State of Maine an extraordinary occasion arising out of the need to resolve many legislative matters pending at the time of adjournment of the Second Regular Session of the 123rd Legislature of the State of Maine; and

WHEREAS, the public health, safety, and welfare requires that the Legislature resolve these pending matters as soon as possible, and in any event prior to the date of the First Regular Session of the 124th Legislature of the State of Maine, including but not limited to pending legislation and pending nominations of state board and commission members by the Governor requiring legislative confirmation;

NOW THEREFORE, I, JOHN ELIAS BALDACCI, Governor of the State of Maine, by virtue of the constitutional power vested in me as Governor pursuant to Article V, Part 1, Section 13 of the Constitution of the State of Maine, convene the Legislature of this State, hereby requesting the Representatives to assemble at ten o'clock and the Senators at ten o'clock in the morning in their respective chambers at the Capitol in Augusta on Tuesday, April 1, 2008, in order to receive communications, resolve pending legislation carried over from the Second Regular Session of the 123rd Legislature and act upon pending nominations.

In testimony whereof, I have caused the Great Seal of the State to be hereunto affixed given under my hand at Augusta this thirty-first day of March in the Year Two Thousand and Eight.

S/John Elias Baldacci
Governor

S/Matthew Dunlap
Secretary of State

READ and ORDERED PLACED ON FILE.

QUORUM CALL

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#364)

PRESENT: Senators: BARTLETT, BENOIT, BOWMAN, BRANNIGAN, DAMON, DIAMOND, DOW, GOOLEY, HASTINGS, HOBBS, HOBBS, MARRACHE, MARTIN, MCCORMICK, MILLS, MITCHELL, NASS, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SHERMAN, SMITH, SNOWE-MELLO, TURNER, WESTON, THE PRESIDENT - BETH G. EDMONDS

28 Senators having answered the roll, the Chair declared a quorum present.

Off Record Remarks

Out of order and under suspension of the Rules, on motion by Senator **MITCHELL** of Kennebec, the following Senate Order:
S.O. 26

Ordered, that a message be sent to Governor John E. Baldacci, informing him that a quorum of Senators is assembled in the Senate Chamber for the consideration of such business as may come before the Senate.

READ and PASSED.

The Chair appointed the Senator from Kennebec, Senator **MITCHELL** to deliver the message to the Governor. The Senator was escorted to the Governor's Office.

Subsequently, the Senator from Kennebec, Senator **MITCHELL** reported that she had delivered the message with which she was charged.

Out of order and under suspension of the Rules, on motion by Senator **MARTIN** of Aroostook, the following Senate Order:
S.O. 27

Ordered, that a message be sent to the House of Representatives informing that Body that a quorum of Senators is present for the consideration of such business as may come before the Senate.

READ and PASSED.

The Chair appointed the Senator from Aroostook, Senator **MARTIN** to deliver the message to the House. The Senator was escorted to the House of Representatives.

Subsequently, the Senator from Aroostook, Senator **MARTIN** reported that he had delivered the message with which he was charged.

SENATE PAPERS

Bill "An Act To Amend Teacher Confidentiality Laws"
S.P. 912 L.D. 2291

Sponsored by Senator **BOWMAN** of York. (GOVERNOR'S BILL)
Cosponsored by Representative **NORTON** of Bangor.

On motion by Senator **BOWMAN** of York, **REFERRED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS** and ordered printed.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

Senate at Ease.

Senate called to order by the President.

ORDERS

Joint Resolution

On motion by Senator **MITCHELL** of Kennebec under unanimous consent on behalf of President **EDMONDS** of Cumberland (Cosponsored by Representative **MAZUREK** of Rockland and Senators: **BENOIT** of Sagadahoc, **DAMON** of Hancock, **GOOLEY** of Franklin, **MILLS** of Somerset, **NUTTING** of Androscoggin, **PERRY** of Penobscot, **RAYE** of Washington, **SAVAGE** of Knox, **STRIMLING** of Cumberland, **TURNER** of Cumberland, Representatives: **BOLAND** of Sanford, **BRYANT** of Windham, **CANAVAN** of Waterville, **CARTER** of Bethel, **CEBRA** of Naples, **CRAVEN** of Lewiston, **FITTS** of Pittsfield, **HARLOW** of Portland, **HILL** of York, **MARLEY** of Portland, **PIEH** of Bremen, **RECTOR** of Thomaston, **SAVAGE** of Falmouth, **SIMPSON** of Auburn, **TRINWARD** of Waterville, **WEDDELL** of Frankfort), the following Joint Resolution:

S.P. 911

**JOINT RESOLUTION IN SUPPORT OF THE EXPANSION OF
DOWNEASTER RAIL SERVICE IN MAINE**

WHEREAS, since its inception in 2001, the Downeaster rail service operated by Northern New England Passenger Rail Authority has proven indispensable to the economy of Maine; the train now makes 5 round trips daily from Boston to Portland and is carrying more than 350,000 passengers per year; and

WHEREAS, communities along the route have enjoyed substantial economic development directly resulting from regular and reliable rail service, and this service offers to Maine citizens and visitors a travel option that is convenient, environmentally clean and safe; and

WHEREAS, the Downeaster allows commuters to work productively in a pleasant environment while traveling at speeds as high as 79 miles per hour, and rail service allows families to vacation together cheaply, safely and free from the stress and expense of travel by car; and

WHEREAS, the State of Maine's transportation policy encourages movement of freight and passengers by rail to relieve truck impact on roads, to mitigate highway congestion and to provide environmental advantages; and

WHEREAS, improvements to the rail bed, switching systems and other elements of infrastructure related to the Downeaster have enhanced and accelerated freight service for Maine manufacturers, and, since the extension of Downeaster service to Brunswick will provide similar track improvements along that

route, additional benefits will accrue to Maine freight rail customers; and

WHEREAS, increases in fuel costs are a challenge to many Maine consumers and to industries, including tourism, Maine's largest industry, and enhancement of rail systems is a proven strategy to meet the challenge of increased energy costs for business commuters, for tourists and for freight forwarders; and

WHEREAS, the Downeaster's privately owned rail line pays property taxes to each municipality through which it passes and yet retains responsibility for purchasing and maintaining its own infrastructure; and

WHEREAS, it is not possible for privately owned passenger rail systems to survive without subsidy when competing with carriers using highway systems built and maintained with tax revenue; and

WHEREAS, the Downeaster passenger service was successfully launched and has since grown with the aid of federal subsidies that will end in 2009; and

WHEREAS, the benefits of passenger rail service into Maine can be greatly enhanced by extending the service north of Portland to Freeport and Brunswick, thus permitting passengers to travel between Boston and Brunswick on a single seat ticket; and

WHEREAS, an extension to Brunswick will permit passengers to connect with an existing line already servicing communities from Bath to Rockland and the extension may later permit adding service to other important locations in Maine, such as from Brunswick through Augusta to Bangor; and

WHEREAS, extensions could also occur from Yarmouth through Auburn to Lewiston, from Yarmouth to Bethel and from Portland to Fryeburg using the line known as the Mountain Division Rail, with a commitment to look at further expansions of passenger rail as they become feasible and economical; and

WHEREAS, since powerful demographic and market forces are driving the national growth of transit-oriented development, investment in passenger rail service will sustain transit-oriented development in currently served communities and could lay the groundwork for transit-oriented development across midcoast Maine and northward; and

WHEREAS, implementation of the Downeaster's business plan will greatly increase ridership, will bring more commuters and tourists into Maine, will relieve highway congestion, will encourage transit-oriented development along the rail corridor and will improve freight service; and

WHEREAS, while the current Downeaster business plan will require substantial public subsidies, the expansion will significantly increase ridership, which, through economies of scale, will reduce the subsidy per passenger mile and enhance the net public benefit; and

WHEREAS, according to a recent study by the Center for Neighborhood Technology, by 2030 development associated with Portland-Boston Downeaster service will generate

\$3,200,000,000 in cumulative construction investment, create more than 8,100 jobs and contribute an additional \$55,000,000 in tax revenues annually to Maine; and

WHEREAS, also by 2030, the additional benefits associated with expanded service to Brunswick, with connections to Rockland, will generate an additional \$1,000,000,000 in construction investment, create an additional 2,400 jobs and add an additional \$16,500,000 in annual state tax revenues; and

WHEREAS, the counties through which the Downeaster line currently passes, and will pass in the future, are the primary benefactors of those developments, and so methods of capturing the increased economic benefits should be explored; and

WHEREAS, the existing Portland-Boston service and the proposed Brunswick link are essential foundations for future extension of freight and passenger rail services northward in Maine; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-third Legislature now assembled in the First Special Session, on behalf of the people we represent, take this opportunity to express our support of the intent that, upon the conditions specified below, the State will provide its share of operating subsidy for Downeaster rail service of approximately \$8,000,000 per year beginning in fiscal year 2010; and be it further

RESOLVED: That, upon the conditions specified below, the State will provide its share of debt service subsidy for a term of 25 years to amortize up to \$31,500,000 in capital investment to expand rail service from Portland to Brunswick; and be it further

RESOLVED: That this intention by the State to fund subsidies and capital improvements is conditioned on an exercise of best efforts by Northern New England Passenger Rail Authority and the Department of Transportation to obtain such further capital and operating support for the Downeaster service as may be available from federal funds, other participating states and private and governmental sources.

READ and ADOPTED.

Sent down for concurrence.

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

House

Bill "An Act To Amend the Requirements for Approval of the Use of Physical Restraints"

H.P. 1518 L.D. 2138

READ A SECOND TIME and PASSED TO BE ENGROSSED, in concurrence.

House As Amended

Bill "An Act To Establish Necessary MaineCare Pharmacy Incentives" (EMERGENCY)

H.P. 321 L.D. 405
(C "A" H-859)

Bill "An Act To Provide Property and Excise Tax Relief to Disabled Maine Veterans"

H.P. 1485 L.D. 2099
(C "A" H-856)

Resolve, Regarding Legislative Review of Portions of Chapter 101: Maine Unified Special Education Regulation, a Major Substantive Rule of the Department of Education (EMERGENCY)

H.P. 1516 L.D. 2136
(H "A" H-808 to C "A" H-763)

Resolve, Regarding Legislative Review of Portions of Chapter 120: Release of Data to the Public, a Major Substantive Rule of the Maine Health Data Organization (EMERGENCY)

H.P. 1542 L.D. 2167
(C "A" H-860)

Bill "An Act To Protect Children from Lead Poisoning" (EMERGENCY)

H.P. 1546 L.D. 2172
(C "A" H-861)

Bill "An Act To Promote the Agricultural Economy" (EMERGENCY)

H.P. 1606 L.D. 2245
(C "A" H-862)

Bill "An Act To Protect Lake Water Quality"

H.P. 1610 L.D. 2249
(C "A" H-864)

READ A SECOND TIME and PASSED TO BE ENGROSSED AS AMENDED, in concurrence.

Senate

Resolve, Implementing the Recommendations of the Commission To Study Primary Care Medical Practice

S.P. 910 L.D. 2286

READ A SECOND TIME and PASSED TO BE ENGROSSED.

Sent down for concurrence.

Senate As Amended

Bill "An Act To Adopt the Revised Uniform Anatomical Gift Act"

S.P. 528 L.D. 1505
(C "A" S-527)

Bill "An Act To Enhance Economic Development in Maine's Aviation Industry"

S.P. 770 L.D. 1976
(C "A" S-485)

Resolve, To Prevent Domestic Violence and Protect Our Citizens

S.P. 784 L.D. 1990
(C "A" S-525)

READ A SECOND TIME and PASSED TO BE ENGROSSED AS AMENDED.

Ordered sent down forthwith for concurrence.

Bill "An Act To Eliminate the Property Tax on Business Equipment Owned by Small Retailers"

S.P. 318 L.D. 1001
(C "B" S-459)

READ A SECOND TIME.

On motion by Senator **MITCHELL** of Kennebec, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED.**

All matters thus acted upon were ordered sent down forthwith for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

Senate

Ought to Pass As Amended

Senator **NUTTING** for the Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act To Reduce Wild Blueberry Theft"

S.P. 795 L.D. 2001

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-542).**

Report **READ** and **ACCEPTED.**

READ ONCE.

Committee Amendment "A" (S-542) **READ** and **ADOPTED.**

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

Senate at Ease.

Senate called to order by the President.

At this point a message was received from the House of Representatives, borne by Representative PINGREE of North Haven informing the Senate that a quorum of Representatives was assembled for the consideration of such business as may come before that Body.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

Bill "An Act To Eliminate the Property Tax on Business Equipment Owned by Small Retailers"

S.P. 318 L.D. 1001
(C "B" S-459)

Tabled - April 1, 2008, by Senator **MITCHELL** of Kennebec

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**

(In Senate, April 1, 2008, **READ A SECOND TIME.**)

On motion by Senator **STRIMLING** of Cumberland, Senate Amendment "A" (S-543) **READ.**

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Strimling.

Senator **STRIMLING:** Thank you, Madame President. Lest my good colleague from York County worry that I am trying to do something to hurt the bill, this is just a technical change that needed to occur as it went through drafting. I will just read the summary. The amendment is being presented on behalf of the Committee on Bills in Second Reading to prevent a conflict by correcting the amending clause and by incorporating a change made to the Maine Revised Statutes Title 36 Section 693, Subsection 1, Paragraph A, in Public Law 2007 Chapter 437. It's a riveting part of the law.

On motion by Senator **WESTON** of Waldo, **TABLED** until Later in Today's Session, pending the motion by Senator **STRIMLING** of Cumberland to **ADOPT** Senate Amendment "A" (S-543).

The Chair laid before the Senate the following Tabled and Later (2/25/08) Assigned matter:

Bill "An Act To Ensure Adequate Funding for the Oversight of Spent Nuclear Fuel Storage in Maine" (EMERGENCY)

H.P. 1351 L.D. 1918
(C "A" H-671)

Tabled - February 25, 2008, by Senator **MARTIN** of Aroostook

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-671)**, in concurrence

(In House, February 12, 2008, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-671).**)

(In Senate, February 25, 2008, **READ A SECOND TIME.**)

Senator **MARTIN** of Aroostook moved to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in **NON-CONCURRENCE.**

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President. This bill is incorporated in the budget that we enacted last night. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Smith.

Senator **SMITH:** Thank you, Madame President. I do not rise to oppose this motion, but simply to inform the Senate that as a result of the budget action taken, which essentially circumvents this bill, in my judgment, the ratepayers of Maine probably will be paying an extra \$7 million to \$10 million in electric rates over the next few years in order to keep a fully staffed nuclear oversight staff on board for the state of Maine. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Bartlett.

Senator **BARTLETT:** Thank you, Madame President, men and women of the Senate. I question the analysis that was just brought forward in terms of the cost of this. The budget proposal, I think, added \$15,000 over the amount that was already to be paid by Maine Yankee. I simply think it's going to take an awful lot of years to get to \$10 million and will only happen in the unlikely and unfortunate scenario that the federal government fails to meet its obligation to take the nuclear waste out of this state. We are talking about a mere pittance to protect the good people of the state of Maine. Thank you.

On motion by Senator **MARTIN** of Aroostook, Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE.**

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (3/28/08) Assigned matter:

HOUSE REPORTS - from the Committee on **MARINE RESOURCES** on Bill "An Act To Make Clam Flat Status Notification More Efficient, Cost-effective and Economically Beneficial to the Shellfish Industry"

H.P. 1508 L.D. 2129

Majority - Ought to Pass as Amended by Committee Amendment "A" (H-727) (10 members)

Minority - Ought to Pass as Amended by Committee Amendment "B" (H-728) (2 members)

Tabled - March 28, 2008, by Senator **DAMON** of Hancock

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-728)** Report, in concurrence

(In House, March 27, 2008, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-728)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-728) AS AMENDED BY HOUSE AMENDMENT "A" (H-789)** thereto.)

(In Senate, March 28, 2008, Reports **READ**.)

On motion by Senator **WESTON** of Waldo, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President and members of the Senate. I live substantially far away from the area in question that we are discussing. I would like to know which side I am supposed to be on. I would pose a question to any member of the Senate, will they please tell me where we are and what the clam bill is going to do before I vote in a roll call. Thank you.

THE PRESIDENT: The Senator from Aroostook, Senator Martin poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Lincoln, Senator Dow.

Senator **DOW:** Thank you, Madame President. This is just on notification. Let me clear this all up. I believe this one has to do with newspaper notification. The crowd is over there nodding yes, it is. The fishermen don't use the newspaper, it's too slow. They call up on the phone. The ones that do have access to a computer look it up, they can get immediate results for it. I support the position that the good Senator from Hancock has.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Damon.

Senator **DAMON:** Thank you, Madame President. To the gentleman from Aroostook, it is about notification and this bill takes away the requirement that this notification be published in a newspaper. There are numerous ways that the clam diggers now can get that notification and, as the good Senator from Lincoln mentioned, it is more timely. They can get it through a hotline, they can get it through their email, or they can get it through the internet and it is felt by the committee that this additional expense of having the notification in the newspaper is unnecessary. I hope that helps the good Senator from Aroostook. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Nutting.

Senator **NUTTING:** Thank you, Madame President. I would like to request permission to pose a question to the Chair. I'm confused, is the motion the one that is in our book here to accept the Minority Ought to Pass by Committee Amendment "B" in non-concurrence, or is the motion to be in concurrence with the other Body?

THE PRESIDENT: The motion is to be in concurrence with the other Body. The Minority Ought to Pass as Amended by Committee Amendment "B" Report would be in concurrence with the other Body. This amendment is to that report. The Chair would just remind folks these two bills are about the same topic and they can be confused. This bill has to do with clam flat status notification and it comes to us from the other Body with the Minority Report accepted and it would be in concurrence. That's where we are. The Chair recognizes the Senator from Sagadahoc, Senator Benoit.

Senator **BENOIT:** Thank you, Madame President. I'd like to ask a question, please. Could the Chair of Marine Resources, the Senator from Hancock, Senator Damon, explain to me why he voted for the Majority Report with Amendment "A", but is now offering passage of the Minority Report with Amendment "B", because I am not clear on that. Thank you.

THE PRESIDENT: The Senator from Sagadahoc, Senator Benoit, has posed a question through the Chair to anyone who may answer. The Chair recognizes the Senator from Hancock, Senator Damon.

Senator **DAMON:** Thank you, Madame President. I will be able to answer that question. I believe this bill, along with the bill that we may be hearing sometime later, was a fairly contentious bill for some reason in our committee. There was what I might say was unprecedented pressure by some non-members of our committee to get a unanimous report from our committee in each instance. Sometimes requesting and having the chairs grant votes of reconsideration. Finally the Chair became somewhat fed up with that request and said, 'Alright, I will vote for that, but when it comes to the place where we can debate it I still will maintain my position.' My position is that on this particular bill we should eliminate that requirement to have it in the newspaper. There is a fiscal savings that, if we can ever get to that point, I would like to introduce an amendment that might direct those savings to where they can be best used. I hope that answers the Senator's question as to why the Chair seems to have flip-flopped on this bill. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Raye.

Senator **RAYE:** Thank you, Madame President. I'm sorry, but I am still confused about the posture of this bill with the pending motion. Can someone explain exactly how this differs from the Majority Report? Thank you.

THE PRESIDENT: The Senator from Washington, Senator Raye, has posed a question through the Chair to anyone who may care

to answer. The Chair recognizes the Senator from Hancock, Senator Damon.

Senator **DAMON**: Thank you, Madame President. It doesn't differ terribly. I wish I could give you the details of their differences. Both of the reports require that there not be any notification in the newspapers, that this requirement would not be necessary. I can't find, as I look through this, what that particular change was, but in my mind at least it is not substantive. Again, it was an effort to try to get a unanimous report from the committee and therefore my vote on the Majority side, and now we have this pending question before us and they do essentially the same things. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Dow.

Senator **DOW**: Thank you, Madame President. There's just basically one difference. In the Minority Report, it does allow the department or the commissioner to put the notice in the newspaper under emergency conditions. Assuming that the other sources could not be used or it needs to be a wider notification. That's the difference and in this case that added provision would be an added protection. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Benoit.

Senator **BENOIT**: Thank you, Madame President. I have just one more question for clarification. I'm thinking that the Senator from Lincoln, Senator Dow, may have answered this. I'm going to pose the question, if someone can just answer this. It's my understanding that if I vote for the Majority Report with Amendment 'A' then I'm going to be saving \$20,000 from the budget because that's what the projected cost of that notification in the paper is. Now, if I vote for that, hoping to save \$20,000, does that also allow for the emergency provision if they wanted to put it in the paper? I'm trying to think how I can phrase this without making it even muddier. If I vote for the Minority Report do we still have a savings of \$20,000 with that emergency notification in there? Thank you.

THE PRESIDENT: The Senator from Sagadahoc, Senator Benoit has posed a question through the Chair to anyone who may care to answer. The Chair recognizes the Senator from Lincoln, Senator Dow.

Senator **DOW**: Thank you, Madame President. Yes, the savings is there. There is a curiosity though, for some reason the savings in the Minority Report is \$25,000. Don't ask me why, because I don't know. Again, that Minority Report seems a little bit better as it does allow, in an emergency, the use of the newspaper if it's deemed necessary. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Weston.

Senator **WESTON**: Thank you, Madame President. This seems as clear as clam mud. I would ask if someone would table this until later in today's session.

On motion by Senator **MITCHELL** of Kennebec, **TABLED** until Later in Today's Session, pending the motion by Senator **DAMON** of Hancock to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-728)** Report, in concurrence. (Roll Call Ordered)

Senate at Ease.

Senate called to order by the President.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **MARINE RESOURCES** on Bill "An Act To Make Clam Flat Status Notification More Efficient, Cost-effective and Economically Beneficial to the Shellfish Industry"

H.P. 1508 L.D. 2129

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-727)** (10 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-728)** (2 members)

Tabled - April 1, 2008, by Senator **MITCHELL** of Kennebec

Pending - motion by Senator **DAMON** of Hancock to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-728)** Report, in concurrence (Roll Call Ordered)

(In House, March 27, 2008, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-728)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-728) AS AMENDED BY HOUSE AMENDMENT "A" (H-789)** thereto.)

(In Senate, March 28, 2008, Reports **READ**.)

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#365)

YEAS: Senators: BARTLETT, BENOIT, BOWMAN, BRANNIGAN, BROMLEY, BRYANT, COURTNEY, DAMON, DIAMOND, DOW, GOOLEY, HASTINGS, HOBBS, MARRACHE, MARTIN, MCCORMICK, MILLS, MITCHELL, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SHERMAN, SMITH, SNOWE-MELLO, STRIMLING, SULLIVAN, TURNER, WESTON, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: None

35 Senators having voted in the affirmative and No Senator having voted in the negative, the motion by Senator **DAMON** of Hancock to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-728)** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "B" (H-728 **READ**.

On motion by Senator **DAMON** of Hancock, Senate Amendment "A" (S-535) to Committee Amendment "B" (H-728) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Damon.

Senator **DAMON:** Thank you, Madame President, ladies and gentlemen of the Senate. This amendment that I am proposing to attach to the action that we have just taken takes the revenues that will be saved by the action we just took, the \$25,000 in one-time revenues, and directs the Department to use those towards overtime pay for those people who go out and take the water samples on the flats so they can be tested so that the flats can be reopened as quickly as possible. It also directs the Department to use this money to help train volunteers who will be able to do that. Essentially, presumably, we will have a greater staff of people trained to go out and obtain the water samples so that we can bring them back for testing. That's an important piece. Then we will have the opportunity to avail ourselves of that labor over a weekend, over a holiday, or over some other day in which the people aren't supposed to be at work generally, but we would like to have them come to work because they will take the samples to get the flats opened sooner for the people to go out and dig their clams. That's what this is about.

I was also asked if this amendment would take away from the notification that the Department can place in the newspaper in the event of an extraordinary event and it does not take it away. It still allows the Department, if we had a hurricane or some other natural disaster that was going to require a wider and greater notification, that still does that. This amendment that I'm proposing for your consideration now does not take that away. I urge the adoption of this amendment. Thank you, Madame President.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Snowe-Mello.

Senator **SNOWE-MELLO:** Thank you, Madame President, ladies and gentlemen of the Senate. I rise today in full support of this amendment. It's very much an appropriate way to spend this \$25,000. In testimony in our committee we were all concerned about training the volunteers and getting folks out there. I am very much in support of this amendment. It's a very good amendment. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Dow.

Senator **DOW:** Thank you, Madame President. I support everything the two Senators have just said. Thank you.

On motion by Senator **DAMON** of Hancock, Senate Amendment "A" (S-535) to Committee Amendment "B" (H-728) **ADOPTED**.

House Amendment "A" (H-789) to Committee Amendment "B" (H-728) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "B" (H-728) as Amended by House Amendment "A" (H-789) and Senate Amendment "A" (S-535) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-728) AS AMENDED BY HOUSE AMENDMENT "A" (H-789) AND SENATE AMENDMENT "A" (S-535)** thereto, in **NON-CONCURRENCE**.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later (3/28/08) Assigned matter:

HOUSE REPORTS - from the Committee on **MARINE RESOURCES** on Bill "An Act To Facilitate the Timely Reopening of Closed Clam Flats"

H.P. 1422 L.D. 2038

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-741)** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (H-742)** (4 members)

Tabled - March 28, 2008, by Senator **DAMON** of Hancock

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-742)** Report, in **NON-CONCURRENCE**

(In House, March 27, 2008, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-741)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-741)**.)

(In Senate, March 28, 2008, Reports **READ**.)

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Damon.

Senator **DAMON:** Thank you, Madame President, ladies and gentlemen of the Senate. If you were confused by the last bill, strap yourself in. I don't know quite where to begin on this. It is a simple bill, in my mind, but I've got a simple mind. It's actually probably more complex than that. One of the tasks, one of the

charges, of the Department of Marine Resources is to protect public health. It does many other things, of course, but one of them is to protect public health and one of the ways that it protects public health is it makes sure that the fish, both shellfish and finfish, that are harvested for consumption from our waters are safe to eat. It takes its job very seriously and, thankfully, that it does. One would only have to imagine a short time if, for instance, we were allowing product to go on the market, whether it be shellfish or whether it be finfish, that would go out onto the market and make the consuming public ill, or even worse, cause their death. Of course if that happened then the consuming public would lose all confidence and faith not only in the Department of Marine Resources, but also in the harvesters who are gathering that as their means of livelihood and the market would go. It's important that they preserve and protect the public health.

There has been, as the good Senator from Lincoln started this conversation and I'm sure will have something to add to it as we continue in the discussion, some concern among the harvesters, those men and women who go out and dig in the flats for these clams, that when the Department makes a closure, whether it be a temporary closure because of a rainfall event or whether it be a longer closure because of a pollution situation, it closes down a whole growing area. It is felt by some in the harvesting community and the fishing community that they don't reopen it quickly enough when they make that closure. That it could be opened sooner. Their request came before our committee last year, that we conduct an independent review of the Department of Marine Resources, its protocols and procedures to see if it is, in fact, doing the job that we hope it is doing and that it's allowing the diggers to dig as quickly as they can while at the same time protecting public health. This review, this independent review of three people, three experts in the area who came into the State of Maine from outside of Maine and spent a week with us, cost about \$20,000. It was \$20,000 that the Department didn't have. The industry, the diggers, stepped up with the additional money that was needed. I think we split it in half, \$10,000 each. That's a testimony to how important it is to them and how important it should be for us to get this right.

That review, that peer review, was issued and was presented to the committee with jurisdiction over these matters and that is the Joint Standing Committee on Marine Resources. The review cited on numerous occasions that what the Department needed was two more scientists, two more people to be at their laboratories; one at the laboratory in Lamoine and the other in the laboratory in Boothbay Harbor. They also recommended that there be established, for communication purposes, a Shellfish Advisory Council. That's a good thing. It's made up of members of the industry; harvesters, dealers, and probably some consumers. They will meet on a regular basis and discuss with officials at the Department of Marine Resources what is going on in their industry. It gives them voice and they should have voice. This isn't unprecedented. We have a Scallop Advisory Council. We have a Lobster Advisory Council. We have all kinds and means of advisory councils and the shellfish harvesting community, the clam community, ought to have one too. We agree with that.

Where the two reports fall out is that the Majority Report, which is also the one that you see my name appears on, and I hope I explained why that happened, it mandates that in addition to having a Shellfish Advisory Council that there be two private laboratories that be used for the purpose of conducting tests on

the water samples that are taken from the flats. That would be two in addition to our Department of Marine Resources testing facilities that I have previously mentioned; the one in Lamoine and the one in Boothbay Harbor. It is that provision that I object to and for a couple of reasons, not the least of which is the fiscal note of \$200,000 plus that will be required to do that. That \$200,000 can be much better spent in a department that is woefully under funded and has continued to suffer the cuts that many of the departments that you oversee have suffered too. The exception might be that there isn't very much to begin with to cut and when you make over a million dollars in cuts you have substantially hampered the ability of that department to do its work. That is number one. Number two, in my mind, is that this Shellfish Advisory Council ought to be looking at this whole issue and making the recommendation. I would give that much greater credence, personally, if they came back to us in future legislatures and said we need to expand the testing capacity of the Department of Marine Resources beyond its two held laboratories and this is how we suggest they do it. That recommendation has not come to us. That recommendation has come to us from legislators who have sponsored a bill and has come to us from a segment of the harvest community. A segment of the harvest community that is very involved in this whole issue and perhaps, I would dare say without exaggeration, the most involved and organized of the clam diggers along the entire coast of Maine, but they represent a smaller area. When I look at my clam diggers, the ones further Downeast, who are not necessarily in support of this because they might not know as much about it, or it doesn't seem as though it's helping them because the two laboratories which have been identified to take part in this testing, one is in Scarborough and the other is in Richmond. Neither of those communities, though fine communities, are close to Machias or Jonesport or even Northeast Harbor. It would seem as though our efforts were not keeping them in the loop, but were being directed somewhere else.

Ladies and gentlemen of the Senate, I fully support and would urge you to as well, the creation of the Shellfish Advisory Council which was called for in the peer review study. I want that. I want it to be instituted. I want it to have its voice within the Department of Marine Resources. I want to come from that voice legislation that is truly thought out and truly vetted from harvesters throughout the length and breadth of this coast of Maine, this great coast. To do it differently than that, to do it as is being suggested by the Majority Report at the behest of a few clammers and very few legislators, is not the best way to make policy. I would urge you to vote for the pending motion, which is to adopt the minority report. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Snowe-Mello.

Senator **SNOWE-MELLO:** Thank you, Madame President, ladies and gentlemen of the Senate. I stand here today in complete and full support of L.D. 2038, and I promise you that I have not changed my mind on this issue. When State dollars are stretched to the max I believe that we need to turn to the private sector for help. L.D. 2038 creates a spirit of collaboration among clam diggers, municipalities, and the Department of Marine Resources. It permits towns with significant economic activity in clamming to move the necessary testing along more quickly. Right now it can take years to get a clam flat opened. At the rate we are doing it now it can take at least five years. That's totally unacceptable to

me. I want clambers back to work. This bill is not asking anything out of the ordinary because at times state agencies already use private labs, such as MicroTechnologies, for animal disease testing, so water testing should not be treated any differently. I have heard that those who are opposed to this legislation are because the Department of Marine Resources believes that this is a matter of health and we should not allow private labs to test water. Of course this is a matter of health, but for goodness sake, the private labs are already certified by the State. Private labs are liable for the work they do and results that come out wrong would be on their head as well, even more so. Testimony after testimony from clambers all over this state, including the good Senator from Hancock, Senator Damon's area, came to testify in support of this legislation. This is not just a Freeport, Brunswick, and Scarborough bill. This is including the whole coast.

If local communities, such as Scarborough, are willing to bear some of the State's financial burden then so be it. Let them. If adopted, L.D. 2038 will commit municipalities, at their own expense, to engage certified public laboratories and water quality testing. This bill gets clambers back to work and gets more food product to the market. I think that should be our goal. Abden Simmons from Waldoboro, the shellfish committee chairman and a harvester in the Medomak as well at the St. George Rivers, has harvested clams for a living for the past 18 years. In his testimony he said that he is always looking for ways to improve the digging in the river, whether it be improving the water quality or improving on our stock clams. Waldoboro is on a two-week mandatory closure and if they receive an inch of rain in a 24-hour period of time, if that one inch of rain occurs, a third of the river is closed. However, we have just learned that they could lose another third of the river to the rainfall closure. The town of Waldoboro is the biggest one-town clam producer in this state. Closing two thirds of their river for periods of 14 days without even testing is going to cripple Waldoboro and its 180 harvesters. If they have the ability to privately test their own river, the gentlemen stated, and have the results recognized by DMR, it would greatly minimize the economic impact on Waldoboro. DMR has stated they are short handed. Well if so then this, ladies and gentlemen, is a perfect solution. I ask the Senate to give towns the opportunity to get faster results by using private labs. This would get towns like Waldoboro's harvesters, and those all across the coast, back to work faster. I urge you to support L.D. 2038. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Benoit.

Senator **BENOIT:** Thank you, Madame President, ladies and gentlemen of the Senate. I don't have prepared remarks but I do want to offer a little bit of opinion from mid-coast Maine. We have several groups of clam harvesters in the mid-coast area, and I'm sure you are all aware of that. I've always thought of them as small businesses. Each one of them supports families, and extended families in some cases. They are contributors to their communities. I think I am going to be supporting the Majority Report because I believe it is important to have access to those outside resources if they want them. These laboratories are certified by the State already. They are known nationally. I have one in my district, in Richmond, which the Senator from Hancock, Senator Damon, referred to and I think they are more than qualified. I know they are more than qualified, I'm not even going

to use the word 'think'. I believe that that would be something to expand on for future uses going down the coast if this turns out to be an avenue that the clam harvesters can use to actually speed up their water testing, perhaps it will open more labs and more opportunities along the coast. I think that to stifle that independent laboratory study could possibly stifle economic development in places that we have been trying to encourage. I think we could be getting double fold here by allowing these laboratories to test and allowing the clam harvesters in the communities that have them nearby to be able to use them. They don't have to live in that area to use them, they could certainly take samples down to them from other coastal areas. I will personally be supporting the Majority Report on this. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Dow.

Senator **DOW:** Thank you, Madame President. I will just continue where I left off from the time before and I just want to note, for the record, that I probably would have been better off to have just continued where I was while the Chamber was still full because all I can see is the backs of leather chairs right now from my position. I wanted to talk about the permanent closed areas. Permanent meaning they are closed for long periods of time. They are never considered completely permanent. With the process we use right now in order to open flats that have been closed due to pollution, and they have been closed for very good reasons, we must do a certain amount of water testing. This water testing must be done randomly. It has to be done during high tide, low tide, in the winter, and in the summer. It has to be done under all conditions and in different locations. Part of the study that the good Senator from Hancock referred to had to do with this type of water testing and whether the type of testing we are doing is good or bad and how to improve those tests. The federal government requires that at least 30 tests be done and you can't do any more than two tests per month. It would take 15 months to do all of those 30 tests. Fifteen months, but not on Maine's schedule. On our schedule we take five years to do those tests. This is prohibitive in getting these flats tested and the reports written up. The water testing may not always determine clean water. The testing may determine that there are still problems, but we need to find out where the problem areas are quicker than five years. The 15 months of testing gives us a point of reference in a shorter period of time as to where to go to attack the problems that need to be attacked in order to get these flats cleaned up, the sources of pollution found, and begin the process. There is more to it than just water testing. There are reports that need to be written. Giving the private labs some of the opportunity to do some of the water testing would allow our people in the Department, that is stretched too thin right now, to begin working on these reports that must go to the federal government before anything can be opened up. I see nothing but positive steps here.

The Majority Report asks that we set up a couple of pilot programs and designate those to see how this process will work. The private laboratories are no different than our own in quality. As a matter of fact, they may be better because they must stand up against the scrutiny of many states that have to have different types of water testing done. They are certified by many different agencies in many different states. I don't worry about the quality of their work. Let me tell you something about water testing, or any type of testing in any kind of laboratory, give the same

sample to two, three, or four different labs and they are going to come up with slightly different results. That's normal, but it all fits into a certain parameter. You are going to see that. The question of whether a facility is doing good work or not is if they fit into these parameters. It's easy to test these labs. Certifying a laboratory in the state should take the DMR licensing and evaluating officer no more than two full days in the first year and one full day in subsequent years. If we don't have time for that Maine could request that the FDA certify these labs, and many of them already are. The question about where the labs are, well we have to have the water tested where the labs are. If they happen to be in the southern part of the state, that's where we've got to take the water samples to be tested. That's nothing against Calais, Machias, Jonesboro, or any of those communities. That's just the way it is. It's going to take, as I said, 15 months minimum. It's going to take a year and a half for labs to certify and the only work that we are requesting DMR to do right now is certifying one or two labs, training some volunteers to collect water samples, and the funding for this training is being secured. The last bill was part of securing that. There are many towns and the clambers themselves that would put up some of this money. The study that was just done cost \$20,000; \$40,000 was collected and \$20,000 was sent back to them. That's how dedicated they are. They are dedicated to getting their flats open so they can earn a living. In doing so, even if there are expenses, the State of Maine is going to more than compensate for these expenses in collection of income taxes, or sales taxes, from the benefit of this major industry in Maine.

There are many good reasons. I don't want to prolong this debate but there are many good reasons for rejecting the Minority Report and going with the Majority Report, which would push the DMR more so into these two pilot programs, get this process started, and get us on a different schedule than we are other than this long, tedious five year schedule, which may, in the end, prove that there are still problems and we will have to look another several years down the road. That's not acceptable for the good people of the state of Maine. We want our shores and flats cleaned up quicker than that and we need a way to pinpoint some of these sources of pollution. This bill will help with that. Thank you, Madame President.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Nutting.

Senator **NUTTING:** Thank you, Madame President, ladies and gentlemen of the Senate. I'm not going to comment on why this particular issue seems to be of more interest to the folks on the other side of the aisle from me, but this is a subject that, believe it or not, I have been involved with as a legislator for years and years. I think this is a case where we have the Department of Marine Resources attempting to overcome inaction by the Department of Environmental Protection. Our municipal combined sewerage overflow numbers, unfortunately, are up, and have been up every year for the last four years. Last year our cities discharged 3.2 billion gallons of untreated municipal sewerage into our rivers and, guess what, that all ends up at the coast. I was a sponsor in 2002 of Maine's pump house station bill. I am proud to report that the DEP has worked very well with that bill. We now have over 80 pump house stations along the coast to help pump out boat sewerage and the use of these little dye pills so if you don't have your sewerage pumped out and think you are just going to release it everybody knows. That's

been a good thing. Some of these municipalities have had 10 years to clean up their discharge by simply separating out their storm water pipes from their sewerage pipes. The DEP has sat there while some cities have spent millions and millions of dollars on entertainment complexes, delivering piles of gravel to every homeowner in their city, etcetera; spending money in ways other than cleaning up their sewerage discharge. They talk about a rain event, that has always struck me, when really what they are talking about is a sewerage event because in any rain over an inch and a quarter the municipal sewerage discharge treatment facility is overwhelmed and that untreated, yes diluted, sewerage just is discharged right out into the river and right out into the clam flats. Our beach closures last year were up twice what they were the year before due to bacterial contamination. That's the image that this state is presenting. When I sponsored a bill last year to give the cities in Maine five years, not 15 years, to finish cleaning this up the Department of Environmental Protection opposed that bill.

I'm looking at a bill that I guess is working through the process now. L.D. 2235, I believe, is out of committee and going through this process of being voted on now. I am amazed to read on page 12 that the current statute reads for any municipality with a publicly owned treatment facility discharging more than 6000 gallons per day they paid \$630 per million gallons of discharge. That's now being changed, weakened, so now you can only pay your \$630 per million gallons if you discharge more than 10,000 gallons a day. I saw those clam diggers at the hearing. I couldn't help see them that day because our Ag Committee room is down the hall. There were hundreds of them here. Hundreds of them. They're battling this bacteria, like our beaches are, that, not totally but largely, is coming from municipal combined sewer overflows because of rain events or, frankly, probably from the snow melt this spring as well. Adding private labs to the department's labs, like we do in the agricultural lab, I don't think that can do anything but help the situation. Here again, it's helping one department try to overcome inaction from another department. Some cities, I believe, are going to be over 15 years more before they finally end the practice of dumping sewerage out into our coast and adversely affecting our business climate by closing our beaches to swimming and closing our clam flats to digging. I will be opposing the pending motion so I can support the Majority Ought to Pass Report. Thank you.

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Raye.

Senator **RAYE:** Thank you, Madame President, men and women of the Senate. I rise just to briefly speak to this motion. I want to acknowledge and appreciate the comments of the Senator from Hancock, Senator Damon, with respect to his concern about the clambers down east. I just wanted to note for the record that the clambers in my district, in Washington County, which is the farthest down east you can go, who I have heard from have contacted me to urge me to support the Majority Report that emerged from the Marine Resources Committee. They do know about this bill and they feel that it would be a good thing for the

clamming industry in my district. In particular, I received one message from the Chairman of the Shellfish Committee in the town of Machiasport. Machiasport, believe it or not, is one of the top three towns in the entire state of Maine for softshell clam production. It's difficult to overstate the importance of clamming to my district and the economy of the people in my district. Machiasport alone has nearly 100 commercial harvesters, that is literally 10% of the town. 10% of the town's population are commercial clambers. They have urged me, in the strongest way, to support the Majority Report on this bill. They do not feel the down east region will be at a disadvantage due to the distance to the labs and they are hopeful that by sharing some of the workload that is currently borne by the Department of Marine Resources that it may actually help to allow the department more man-hours to utilize and devote to the down east region. I join the Senator from Androscoggin in urging that we turn back the current motion so that we can move on to support the Majority Report. Thank you.

On motion by Senator **ROSEN** of Hancock, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Damon.

Senator **DAMON:** Thank you, Madame President, ladies and gentlemen of the Senate. I am not going to beat this dead horse, but I do just want to clarify a couple of things that have been read into the record and at least have indicated that something is other than what it is. First of all, the Majority Report directs the DMR to undertake two or more pilot projects with private labs for water quality testing within one year. It's not a suggestion; it's a direction. The Minority Report has, in that same category, the advisory council working with DMR that may consider pilot projects with private labs. There's a difference. Both of the reports, the Majority and the Minority, establish the Shellfish Advisory Council to advise DMR. I have mentioned that before and I am fully supportive of it. I think everyone who has spoken here today on this matter is supportive as well.

Next, the Minority Report requires that the Department of Marine Resources work with the new advisory council on recommendations put forth in the November 2007 peer review of the shellfish sanitation program. That's the peer review to which I referred earlier. In the Majority Report it directs the DMR, working with the council and the FDA, Food and Drug Administration, to implement recommendations of the peer review for the shellfish sanitation program. Both of the reports require a report back to the Marine Resources Committee; that's the same. Both of the reports add emergency preambles; that's the same. The only other difference is that the Majority Report has a fiscal note of \$80,671 in 2008 - 2009 and \$206,619 in 2009 - 2010. The Minority Report has no fiscal note, a minor cost to be absorbed by the DMR.

The other piece that I would like to correct for the record, and I'm not sure it was an inaccuracy other than a perception, when the peer review was requested and then established there was a cost for it, as I said earlier. The cost for that was \$20,000. The Department came up with \$10,000 and the industry, from private sources, came up with an additional \$10,000. It was mentioned that there was \$40,000 raised by the industry. If that was the case, \$30,000 of it didn't go to the peer review. I only add that for

the record and again would urge your support of the Minority Report. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Hancock, Senator Damon to Accept the Minority Ought to Pass as Amended by Committee Amendment "B" (H-742) Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#366)

YEAS: Senators: BROMLEY, BRYANT, DAMON, PERRY, SCHNEIDER

NAYS: Senators: BARTLETT, BENOIT, BOWMAN, BRANNIGAN, COURTNEY, DIAMOND, DOW, GOOLEY, HASTINGS, HOBBS, MARRACHE, MARTIN, MCCORMICK, MILLS, MITCHELL, NASS, NUTTING, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SHERMAN, SMITH, SNOWE-MELLO, STRIMLING, SULLIVAN, TURNER, WESTON, THE PRESIDENT - BETH G. EDMONDS

5 Senators having voted in the affirmative and 30 Senators having voted in the negative, the motion by Senator **DAMON** of Hancock to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-742)** Report, in **NON-CONCURRENCE, FAILED**.

The Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-741)** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-741) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-741)**, in concurrence.

The Chair laid before the Senate the following Tabled and Later (3/31/08) Assigned matter:

Bill "An Act To Make Supplemental Appropriations and Allocations for the Expenditures of State Government and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2008 and June 30, 2009" (EMERGENCY)

H.P. 1547 L.D. 2173
(H "W" H-848; S "K" S-511;
S "P" S-516; S "Q" S-517
to C "A" H-806)

Tabled - March 31, 2008, by Senator **ROTUNDO** of Androscoggin

Pending - **FURTHER CONSIDERATION**

(In House, March 27, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-806) AS AMENDED BY HOUSE AMENDMENTS "P" (H-840) AND "W" (H-848)** thereto.)

(In Senate, March 28, 2008, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-806) AS AMENDED BY HOUSE AMENDMENT "W" (H-848) AND SENATE AMENDMENTS "K" (S-511); "P" (S-516) AND "Q" (S-517)** thereto, in **NON-CONCURRENCE**.)

(In House, March 28, 2008, that Body **ADHERED**.)

On motion by Senator **MARTIN** of Aroostook, the Senate **ADHERED**.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

Bill "An Act To Eliminate the Property Tax on Business Equipment Owned by Small Retailers"
S.P. 318 L.D. 1001
(C "B" S-459)

Tabled - April 1, 2008, by Senator **WESTON** of Waldo

Pending - motion by Senator **STRIMLING** of Cumberland to **ADOPT** Senate Amendment "A" (S-543)

(In Senate, April 1, 2008, **READ A SECOND TIME**.)

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Strimling.

Senator **STRIMLING:** Thank you, Madame President. Just to reiterate, this is a technical change. I think my colleagues on the other side of the aisle have clarified that with the legal analysts and it appears that all this does is eliminate the double dip. Thank you.

On motion by Senator **STRIMLING** of Cumberland, Senate Amendment "A" (S-543) **ADOPTED**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (S-459) AND SENATE AMENDMENT "A" (S-543).

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

Senator **DIAMOND** of Cumberland was granted unanimous consent to address the Senate off the Record.

Senator **BROMLEY** of Cumberland was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

Senator **COURTNEY** of York was granted unanimous consent to address the Senate off the Record.

Senator **PLOWMAN** of Penobscot was granted unanimous consent to address the Senate off the Record.

On motion by Senator **MITCHELL** of Kennebec, **ADJOURNED** to Wednesday, April 2, 2008, at 10:00 in the morning.

Off Record Remarks